

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 3788	DATE	4/21/2004
CASE TITLE	Russell vs. City of Chicago		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Status hearing held. For the reasons stated in the attached memorandum opinion and order, defendant's motion to dismiss is granted. Enter Memorandum Opinion and Order. Plaintiff's counsel Kint Sinson's oral motion to withdraw as counsel is granted.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.	<div style="text-align: center;"> </div>	number of notices	<div style="text-align: center;"> <b>Document Number</b>   <span style="font-size: 2em;">27</span> </div>
No notices required.		APR 22 2004 date docketed	
Notices mailed by judge's staff.		<i>Cepm</i> docketing deputy initials	
Notified counsel by telephone.		date mailed notice	
X Docketing to mail notices.		mailing deputy initials	
X Mail AO 450 form.			
Copy to judge/magistrate judge.			
MF	courtroom deputy's initials	Date/time received in central Clerk's Office	

**DOCKETED**  
APR 22 2004

**Judge John W. Darrah**

dismissed if it is possible to hypothesize facts, consistent with the complaint, that would make out a claim." *Graehling v. Village of Lombard, Ill.*, 58 F.3d 295, 297 (7th Cir. 1995).

### **BACKGROUND**

The facts, for the purposes of this motion, are taken as true from Plaintiff's Complaint. Plaintiff is a homeless resident of Chicago, Illinois, and is an African-American. Defendant is a municipal corporation empowered to enforce the Chicago Municipal Code.

Prior to April 9, 2001, Raymond Russell was the owner of an automobile. On fourteen separate occasions before April 9, 2001, Plaintiff received parking tickets for this vehicle. At least two of these tickets claimed Plaintiff's automobile did not have a valid sticker and State of Illinois license plate, even though the automobile properly had these items. Plaintiff did not pay any of these tickets.

On April 9, 2001, Defendant affixed a Denver Boot to Plaintiff's automobile because Plaintiff is an African-American. A Denver Boot is a huge clamp applied to a wheel of a car which prevents the car from moving. A Denver Boot is sturdy enough to resist determined efforts by drivers to free their vehicles from its embrace. In 2001, Defendant destroyed Plaintiff's automobile.

Defendant disproportionally places Denver Boots on vehicles in economically depressed parts of Chicago and disproportionally places Denver Boots on vehicles owned by African-Americans. At the time they are placing a Denver Boot on a vehicle, Defendant's employees know the race of the vehicle's owner.

Plaintiff filed the instant suit on June 3, 2003.

## ANALYSIS

Defendant argues that Plaintiff's Complaint is time-barred by the statute of limitations. According to Defendant, Plaintiff filed his claims more than two years from the time he knew of the allegedly illegal act, on April 9, 2001. Generally, parties may not assert a statute of limitations defense on a Rule 12(b)(6) motion to dismiss. However, if a "plaintiff pleads facts that show its suit [is] barred by a statute of limitations, it may plead itself out of court under a Rule 12(b)(6) analysis." *Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 670 (7th Cir. 1998) (alteration in original).

In Illinois, the statute of limitations for § 1983 claims is two years. *E.g.*, *Clark v. City of Braidwood*, 318 F.3d 764, 766 (7th Cir. 2003). For state law claims filed against a local entity, the statute of limitations in Illinois is one year. 745 ILCS 10/8-101. The statute of limitations begins to run when a plaintiff knows or should have known of the commission of the allegedly illegal act. *E.g.*, *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993).

Here, Plaintiff alleges that Defendant has a pattern or practice of placing Denver Boots on vehicles owned by African-Americans. Plaintiff argues that the tort, as committed against him, was not complete on April 9, 2001, because he continued to suffer injury from Defendant's action. However, the statute of limitations began to run when Plaintiff knew or should have known Defendant committed the illegal act.

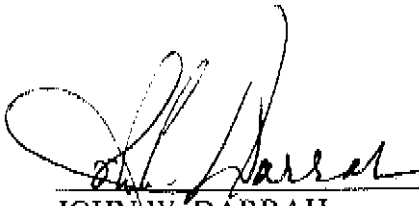
From the facts Plaintiff pled in his Amended Complaint, the date Plaintiff knew or should have known of the illegal act was April 9, 2001, when Defendant placed a Denver Boot on Plaintiff's car. This date is more than two years removed from the date Plaintiff filed his suit. Accordingly, Plaintiff's action is time-barred for both his § 1983 and Illinois causes of action.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is granted.

Dated:

*April 21, 2004*



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JOHN W. DARRAH  
United States District Judge